

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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ERIC COSOVIC, a/k/a ISAD COSOVIC,

Petitioner,

MEMORANDUM and ORDER

-against-

ALBERTO GONZALES, U.S. Attorney General,

Respondent.  
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TOWNES, United States District Judge:

05-CV-1348 **FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ APR 6 2006 ★

P.M. \_\_\_\_\_  
TIME A.M. \_\_\_\_\_

On February 24, 2005, petitioner *pro se*, Eric Cosovic, a/k/a Isad Cosovic, a native of Montenegro, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 ("§ 2254 Petition"), alleging, *inter alia*, that his defense counsel provided ineffective assistance by failing to inform him of the immigration consequences of his guilty plea. *See Cosovic v. Hogan*, No. 05-CV-1034 (SLT). On March 10, 2005, petitioner filed a "Motion for Emergency Stay of Deportation." Although this submission bore docket number "05CN1034" (sic) and sought to stay petitioner's "removal proceedings until his pending petition for review in the form of Writ of Habeas Corpus 2254 is ruled upon," *see* Motion for Emergency Stay of Deportation at 1, it was construed as a separate petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Thus, this submission serves as the pleading in the instant action.

By order dated March 15, 2005, this Court granted petitioner's motion for a stay of deportation. *See Cosovic v. Gonzalez*, No. 05-CV-1348 (SLT) (E.D.N.Y. Mar. 15, 2005). However, less than three weeks later, this Court dismissed the § 2254 Petition as time-barred. *Cosovic v. Hogan*, No. 05-CV-1034 (SLT), slip op. at 1, 3 (E.D.N.Y. Apr. 1, 2005). Petitioner filed a notice of appeal, but also moved to terminate the stay. After this Court granted that motion on May 16, 2005, petitioner sent this Court a letter stating, in pertinent part:

I have submitted a Motion for a stay of deportation on March 10<sup>th</sup> 2005, which was granted on March 15<sup>th</sup> 2005. However, on the said motion I requested the following:

“Petitioner requests that this court stay his removal proceedings until his pending petition for review in the form of Writ of Habeas Corpus 2254 is ruled upon[.]”


This stay was mistakenly taken as a motion under 28 USCS (sic) § 2241, this was a mistake and should be corrected. I have never submitted a Habeas Corpus 2241 to your court, so therefore, I respectfully ask your Honor to correct this mistake . . . .

Letter of Isad Eric Cosovic to Hon. Sandra L. Townes, dated May 19, 2005.

This Court agrees with petitioner that his March 10, 2005, submission should not have been construed as a habeas petition pursuant to 28 U.S.C. § 2241, but merely as a motion for a stay pending resolution of the § 2254 Petition. That motion was rendered moot when this Court dismissed the § 2554 Petition and the Second Circuit denied petitioner’s application for a Certificate of Appealability on November 30, 2005. In addition, that motion was effectively withdrawn by petitioner’s motion to terminate the stay, which this Court granted on May 16, 2005.

Even if petitioner’s March 10, 2005, submission were properly construed as § 2241 habeas petition, such petition was unequivocally withdrawn by petitioner’s letter dated May 19, 2005. Accordingly, this action is hereby dismissed.

**SO ORDERED.**

  
SANDRA L. TOWNES  
United States District Judge

Dated: Brooklyn, New York  
March 31, 2006